IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. B. POWER, as Trustee in Bankruptcy of the Estate of Daniel Fuhrman, Bankrupt,

Petitioner,

vs.

RAY FUHRMAN,

Respondent.

No. 2344.

In the Matter of DANIEL FUHRMAN, Bankrupt.

Upon Review from the United States District Court for the Western District of Washington, Northern Division.

Brief of Petitioner

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STATEMENT OF THE CASE.

This is a proceeding to review an order entered by the United States District Court for the Western District of Washington, Northern Division, dismissing certain contempt proceedings instituted by the trustee in bankruptcy against Ray Fuhrman, wife of the bankrupt. One Daniel Fuhrman had been adjudged bankrupt by the District Court. In due course, J. B. Power, the trustee in bankruptcy, by appropriate proceeding, charged the bankrupt and his wife, Ray Fuhrman, with fraudulently concealing and withholding from him $24,000 in cash belonging to the estate, and sought to enforce a surrender of this fund.

Issue having been joined by written pleadings, and proof taken, the referee became satisfied beyond all reasonable doubt that the contention of the trustee was sustained, except as to the amount. An order was thereupon entered requiring the bankrupt and his wife, Ray Fuhrman, to pay to the trustee the sum of $9,000 cash belonging to the estate, which sum the referee held to be then in their possession and control.

At the instance of both parties, this order was

certified to the District Judge for review, with the result that the decision and order of the referee was in all respects, confirmed by Cushman, District Judge, in a written opinion, followed by an order which required the bankrupt and his wife, Ray Fuhrman, to pay over to the trustee $9,000 on or before July 31st, 1913.

Thereafter, due service of the order was made in the manner directed therein. The time elapsed, but no part of the money was paid. The trustee then instituted contempt proceedings against the parties to enforce the performance of the affirmative act required by the court's order. Upon the hearing of these proceedings, same were, on motion of the trustee, continued indefinitely as to the bankrupt, he having in the interim been found guilty in the criminal department of the United States District Court for concealment of this fund, and having already commenced serving his sentence in the United States penitentiary.

As to the defendant Ray Fuhrman the charges were pressed by the trustee, but the court purged her of contempt and dismissed the proceeding as against her on the ground that under the community

property law of the state of Washington it must be legally presumed that the money had passed out of her possession and control to the possession and control of her husband.

It is this decision and order of the District Court which the trustee brings here for review.

SPECIFICATIONS OF ERROR.

THE DISTRICT COURT ERRED IN MAKING THE ORDER OF NOVEMBER 3, 1913, DISCHARGING RAY FUHRMAN FROM THE CONTEMPT PROCEEDING.

BRIEF OF THE ARGUMENT.

The power of the court to order a bankrupt or a third person having money belonging to the bankrupt's estate to make payment thereof to the trustee will not be questioned. In case of non-compliance, the trustee, as was done in this case, may ask the court to enforce obedience to its order by exercising its power of commitment for contempt. We readily concede that, for these reasons, it is only in clear cases in which the proof is decisive of the party's possession or control of the fund and his ability to surrender it, that the court is justified in making a peremptory order of this character.

That the power to make the order entered in this case was cautiously exercised, and only when its propriety was beyond a reasonable doubt is manifest from the findings of the court, as embraced in the order itself. The referee in bankruptcy who heard the evidence has held this office since the enactment of the Bankruptcy Act of 1898. Concededly a man of great legal attainments and most extensive judicial experience, this referee, after hearing all the evidence, found:

"That the undersigned referee is satisfied beyond all reasonable doubt that at the time of the filing of said petition by the trustee, and ever since, and at the present time, said Daniel Fuhrman, bankrupt, and his wife, Ray Fuhrman, had, and now have, in their possession and under their control, the sum of Nine Thousand ($9,000.00) Dollars in cash, belonging to said estate in bankruptcy, which sum, the said Daniel Fuhrman, bankrupt, and Ray Fuhrman, his wife, have concealed and withheld, and now conceal and withhold from the trustee herein.

"And the undersigned referee in bankruptcy is satisfied beyond all reasonable doubt of the present ability of the said Daniel Fuhrman, bankrupt, and his said wife, Ray Fuhrman, to comply with the order of this court herein made.

"Wherefore, It Is Ordered that the said Daniel Fuhrman, bankrupt, and Ray Fuhrman, his wife, within ten days after the date of the entry of

this order, PAY to J. B. Power, the trustee in bankruptcy herein, the sum of NINE THOUSAND DOLLARS ($9,000.00) cash, belonging to the said estate in bankruptcy, and which this court finds to be now in their possession and under their control." (Record pp. 7 and 8.)

And upon review of these findings and order, the District Judge, in his written opinion, after quoting the first two paragraphs of the referee's findings and order, as we have set them forth above declared:

"Upon the hearing before the referee, a large amount of testimony was submitted to the referee upon the questions involved and determined. A review or analysis of the evidence is not deemed necessary. There was ample testimony to support the findings and order of the referee and the same are, in all things, confirmed, save that, as the time allowed the referee's order, to comply therewith, has expired, the order is now modified to read 'on or before July 31st,' instead of 'within ten days after the date of the entry of this order,' as recited in the order reviewed." (Record, p. 11.)

Immediately after filing this opinion, the District Judge on July 3d, 1913, entered an order, not merely confirming and approving the decree and order of the referee "in all things," but the order further read as follows:

"This court does hereby further order that the

said Daniel Fuhrman, bankrupt, and Ray Fuhrman, his wife, on or before the 31st day of July, 1913, pay to J. B. Power, the trustee in bankruptcy herein, the sum of Nine Thousand Dollars, cash, belonging to said estate in bankruptcy, *and which this court finds to be now in their possession and under their control.* (The italics are ours.)

"And, it is further ordered that service of this order be made by delivery of a certified copy thereof, by the United States Marshal, to each of the said parties, namely, Daniel Fuhrman, and Ray Fuhrman, his wife." (Record, p. 13.)

The order was not obeyed, and the trustee immediately sought to make it effective by instituting proceedings for contempt against the respondents. After some delays, this proceeding came on for hearing. We concede that at this hearing, the trustee offered in evidence and relied only upon the record embracing the proceedings leading to and including the order of the District Judge heretofore quoted in this argument. The respondent's defence was purely a legal one. (Record, p. 15.)

Inasmuch as the bankrupt had already been convicted of the crime of concealing $9,000 and other property from the trustee, and was then serving his sentence in the United States penitentiary, the proceedings against him were suspended

by the trustee. Obviously, at that time, a judgment by the court that he was guilty of contempt and should be imprisoned until he obeyed the order would have been ineffectual, he being already incarcerated. The trustee, however, pressed the proceedings so far as concerned Ray Fuhrman, the wife of the bankrupt. The court refused to commit her for contempt, and dismissed the proceeding against her.

It would appear from the findings of fact and conclusions of law that this judgment was based upon the ground that, under the community property law of the state of Washington, the husband had a right to the possession and control of this fund, and that the court must presume as matter of law that the $9,000 had passed into the possession and control of the husband.

Taking up this proposition we find the court's position stated in the sixth finding of fact, reading as follows:

"That at the time the said sum of nine thousand dollars was taken and received by the said Daniel Fuhrman, which was before the said Daniel Fuhrman was adjudged a bankrupt herein, the said Daniel Fuhrman was the husband of said Ray Fuhr-

man, and said parties were then and there living together as husband and wife in the city of Seattle, county of King, and state of Washington, and said sum of nine thousand dollars was the property of the said community composed of said Daniel Fuhrman and Ray Fuhrman under the laws of the state of Washington, and said Daniel Fuhrman, under the laws of said state, had the right to exercise complete possession, control and management of said sum of nine thousand dollars." (Record, p. 17.)

The conclusion of law reads as follows:

"That under and by virtue of the community property law of the state of Washington, the presumption arises, as a matter of law, that the said Ray Fuhrman no longer has in her possession or control the said sum of nine thousand dollars, or any part thereof; but that the same has passed into the legal and actual possession and legal and actual control of said Daniel Fuhrman, her husband, and that this presumption of law is sufficient to overcome the presumption of fact, arising from the finding of the referee and court that respondent, Ray Fuhrman, had, with her husband, one of the respondents, Daniel Fuhrman, received and withheld said nine thousand dollars from the trustee in bankruptcy." (Record, p. 18.)

The law of the state of Washington referred to by the court is found in Section 5917, of *Rem. & Bal. Code*, which reads as follows:

"Sec. 5917. Community Property Defined—Husband's Control of Personality.

"Property, not acquired or owned as prescribed in the next two preceding sections, acquired after marriage by either husband or wife, or both, is community property. The husband shall have the management and control of community property, with a like power of disposition as he has of his separate personal property, except he shall not devise by will more than one-half thereof."

The "next two preceding sections" above referred to are Sections 5915 and 5916, of *Rem. & Bal. Code*, which define Separate Property of Husband and Separate Property of Wife, respectively.

We fail to see the pertinence of the law of the state of Washington defining the respective rights of the husband and wife to community property and the control thereof. This is not a question of property rights between husband and wife. Whether the $9,000 was community property or the separate property of the husband, whether it was in the possession and control of the wife, or husband, or both, the trustee in bankruptcy was entitled to its possession, and to have the aid of the court in enforcing its surrender.

As a rule, when the husband becomes a bankrupt, proceedings of this character are instituted only against him, because, as a rule, the wife has

concerned herself solely with her household duties, has taken no part in the business which became bankrupt, did not participate in and perhaps knew nothing of the transactions of the husband constituting the concealment of the assets. Under such circumstances, it would be improper for the trustee to join the wife in the proceedings commenced against the bankrupt to enforce a surrender of the concealed assets.

But, are there not cases, in which the business, while standing in the name of the husband, may yet be managed and controlled by the wife? Are there not even more frequent cases where, although the business stands in the name of the husband, the wife, nevertheless, shares with him the responsibility of the care and operation thereof? The writer of this brief, and probably every reader hereof, knows of many a venture of just this kind, where the wife comes to the store in the morning with her husband and occupies herself throughout the day, in as great degree as her husband, in the buying, selling, handling of funds, and other important duties pertaining to the business. And it may be readily conceived that a woman of this

character is apt to assert a considerable voice in shaping the policy of the business.

If a business, operated by a community in this way, becomes bankrupt, may it not happen that the wife and husband have actually confederated and conspired to conceal a large sum of money and property from the trustee. And if the trustee can establish the wife's personal and active participation in the concealment, should she not be made a party to any proceeding to compel a surrender of the concealed assets?

Such was the opinion of the trustee in initiating this proceeding against both the wife and the husband, and his position was supported by the referee, and the District Judge, both of whom found as a *fact,* that beyond all reasonable doubt, the bankrupt *and his wife* had at all times been in the possession and control of $9,000 cash belonging to the estate; that both the bankrupt *and his wife* at all times had concealed and withheld, and continued to conceal and withhold this sum from the trustee; that *beyond all reasonable doubt,* the bankrupt *and his wife* had the present ability to comply with the order of the court. And the final order of the court was that

the bankrupt, *and his wife* pay this sum over to the trustee on or before July 31st, 1913.

These findings and orders against the wife could not have been based merely upon a legal presumption arising out of the community relation; the findings must have been and were made because, from all the evidence, the court became satisfied in this particular case, that the wife had, *in fact,* actually co-operated, confederated and conspired with her husband in accumulating and concealing this sum of $9,000; that *she* knew where it was concealed; and that *she* had it in her power to deliver it or to disclose its whereabouts to the trustee.

As was said by the court *In re Baum,* 169 Fed. 410; (C. C. A. Ark.); 22 A. B. R. 295:

"The court, of course, could not require the petitioner to do an impossible thing and then punish him for refusing to perform it. Therefore, from the fact that the court ordered him to pay over the money, it must necessarily have had before it testimony sufficient to satisfy it of his ability to comply."

And, so, we say here, the order of the referee and the court conclusively determined that the respondent, Ray Fuhrman, was *in fact,* a co-conspira-

tor with Daniel Fuhrman, the bankrupt, in the concealment of the fund. Whether she was wife, sister, friend or agent of the bankrupt cut no figure in the original proceeding, and it should cut no figure in the determination of the contempt proceeding. It was error on the part of the District Court to concern itself in any degree with the question whether Ray Fuhrman was the wife of the banqrupt, and make that the pivotal point in arriving at its judgment. There was before the court its solemn judgment of July 23rd, 1913, that Daniel Fuhrman and Ray Fuhrman then had in their possession and under their control the $9,000 cash, together with the fact that Ray Fuhrman had not complied with the order directing her to turn the same over to the trustee. The only possible excuse she could make in the contempt proceeding for not complying with the court's order would have been to show that, after July 23rd, 1913, *without fault on her part,* the money had been taken from her possession and placed beyond her control. This she neither did nor attempted to do. The respondent in this case should have been held in contempt, or purged from contempt, not on the ground of any legal presumption arising out of her community relation,

but solely upon the *fact* whether, since July 23rd, 1913, *without fault on her part,* she had become physically unable to comply with the terms of that judgment.

As was said *In re Eddleman,* 154 Fed. 160; (D. C. Ky.); 19 A. B. R. 45:

"Under such circumstances the wife should be regarded as agent for the husband and treated accordingly."

The following, also, are bankruptcy cases, in which the wife of the bankrupt was made to answer, both in summary and in contempt proceedings instituted by the trustee to enforce the surrender of assets belonging to the estate shown to have been concealed from the trustee by the wife:

In re Eddleman, supra.

In re Friedman, 153 Fed. 939; 18 A. B. R. 714; (D. C. N. Y.) Affirmed 161 Fed. 260; (C. C. A.) 20 A. B. R. 37.

In re Moore, 104 Fed. 896; (D. C. W. Va.) 5 A. B. R. 151.

As we read the findings of fact and conclusions of law, the judgment of dismissal rested entirely upon finding of fact No. 6, and conclusion of law No. 1—in other words, the legal presumption that

although the respondent Ray Fuhrman did, originally, have the $9,000 in her possession and under her control, the same being community property must be presumed, as a matter of law, to have passed to the possession and control of the husband since the entry of the order of surrender.

We have already argued the proposition that the contempt hearing should have been determined solely on issues of fact and not on presumptions of law, and we would conclude our brief at this point, did we not anticipate that the respondent would seek to uphold the court's judgment on the recitals embraced in finding of fact No. 5, which reads as follows:

> "That the court is unable to find from the evidence introduced that the respondent, Ray Fuhrman, has the present ability, or had the ability at the time of said contempt hearing, to turn over said sum of money, or any part thereof." (Record, p. 17.)

On what facts the court below based this finding, it is difficult to conceive. We concede that the trustee in this contempt proceeding relied entirely upon the order of July 23rd, 1913, which expressly recited that Ray Fuhrman *then* had in her pos-

session and under her control $9,000 cash belonging to the estate, and directed her to pay over this sum to the trustee on or before July 31st, 1913. The trustee did not offer any additional evidence to prove that Ray Fuhrman at the time of the contempt hearing had the ability to comply with the order of the court. *It is also true that the respondent made no defence other than to question the legal sufficiency of the proof introduced by the trustee.* (Record, p. 15.)

It may be that the court below was of the opinion that the burden was on the trustee to show, affirmatively, at the contempt hearing that *at that very time* the respondent had the ability to turn over said sum to the trustee, and, that having failed to maintain this burden, the court believed it was justified in making finding of fact No. 5. Or, it may be that finding of fact No. 5 and finding of fact No. 6 should be read together and that the court based finding of fact No. 5 on the same theory expressed in finding of fact No. 6, that is to say, the court was unable to find that the respondent Ray Fuhrman had the present ability to turn over the $9,000 *because* she was the wife of the bankrupt,

and *because* the money was community property and the husband had the right to exercise complete possession and control and management thereof.

The conclusions of law as made by the court deal only with the subject of legal presumption arising from the community relation, and this bears out the last mentioned theory of the probable basis of the court's finding of fact No. 5. If this surmise is correct, the fallacy of the court's reasoning has already been discussed.

If, on the other hand, this finding was made because the trustee failed to prove, affirmatively, that the respondent at the time of the contempt hearing had the ability to comply with the order, the court erred in imposing the burden of proof upon the trustee, and in making this finding because the trustee made no attempt to assume this burden. However, it would seem that finding of fact No. 5 is not mentioned or suggested in the remotest degree in the conclusions of law made by the court. This finding did not form the basis of the conclusions of law, and, therefore, it cannot be advanced as supporting the judgment.

We will, nevertheless, discuss the question of

the correctness of the court's ruling that the burden of proof in the contempt proceeding was on the trustee.

Upon this question, the authorities are numerous and harmonious. The contempt proceeding was based upon the failure of the respondent to obey the order of July 23rd, 1913, which expressly recited that the respondent, on that very day, had in her possession and under her control $9,000 cash belonging to the estate, and which sum she was ordered to pay over to the trustee on or before July 31st, 1913. That order was before the court at the contempt hearing and it was admitted by the respondent that it had not been obeyed. That order, then, was final and conclusive as to the ability of the respondent to comply with the order upon the date upon which it was made, and this subject could not be reopened at the contempt hearing. *Remington on Bankruptcy,* Volume III, page 568, says:

"Sec. 1857. Whether Evidence on Which Order for Surrender Based May be Re-Examined.

"On Principle it would seem that since the order to surrender assets may be granted only on convincing evidence or evidence beyond a reasonable doubt, the court, on contempt proceedings for failure to obey such order, ought not to go behind the order

itself, if the order was not appealed from, and ought to take into consideration only facts arising subsequently thereto, leaving the propriety of the order itself remediable by appeal or petition for review, since otherwise the contempt proceedings would be diverted into an appeal from the order of surrender itself."

And, again, on page 569, the same author says:

"At any rate, the order for surrender makes a *prima facie* case of possession, such that the trustee's petition for punishment for contempt need not allege ability to comply with the original order for surrender."

In support of this principle, the following cases may be cited:

In re Lans, 19 A. B. R. 458; 158 Fed. 610. (C. C. A., N. Y.)

In re Home Discount Co., 17 A. B. R. 175; 147 Fed. 538. (D. C., Ala.)

In re Frankel, 25 A. B. R. 920; 184 Fed. 539. (D. C., N. Y.)

In re Kirsner vs. Taliaferro, 29 A. B. R. 832; 202 Fed. 51. (C. C. A., 4th Cir.)

In re Stavrahn, 23 A. B. R. 168; 174 Fed. 330. (D. C., N. Y.)

In the case at bar it was not incumbent upon the trustee at the contempt hearing to do more than offer so much of the record as showed the order of

surrender and the service thereof. The failure to comply with the order having been admitted by the respondent, it then devolved on the respondent to show what she had done with the money since the date of the order. That order, as hereinabove set forth, was conclusive of the fact that she did have $9,000 on July 23rd, 1913. In determining the question of contempt, the disposition of the $9,000 subsequent to July 23rd, 1913, must be established by the respondent and not by the trustee.

Exactly in point is the case of *In re Stavrahn, supra,* in which the court concludes its opinion in the following language:

"When the matter was before the District Court in February, 1909, on the final application to punish the bankrupt for a willful and contumacious disobedience of the order of August 5th, 1908, directing him to pay over, it appeared that before the last-named order was made there had been two adjudications, after full hearings, whereat the bankrupt testified and had the right to produce witnesses, both finding that the bankrupt had fraudulently concealed at least $5,000, the profits of a certain real estate transaction which he should have turned over with the rest of his estate. It further appeared that the bankrupt had not taken any steps to review either of these adjudications. Certainly this was sufficient, *prima facie,* to establish the proposition that at some time subsequent to the

bankruptcy, and prior to August 5th, 1908, he was in the actual possession of that particular sum of money. In the face of such a finding it was incumbent on the bankrupt to give some reasonable explanation as to why it was that he did not turn it over in compliance with the order requiring him so to do; it was for him to explain how and why it was that this particular sum, in his possession a few months before, had disappeared, so that he no longer 'had the ability to turn it over in compliance with the order.' This he wholly failed to do. His affidavits in opposition to the motion goes at great length into certain transactions subsequent to the bankruptcy relating to the leasing of a building, the purchase of its equipment and the establishing therein of a restaurant business with himself as manager—all with funds advanced by his father-in-law. As to what became of the real estate profits—the $5.000, which it had been held he concealed—nothing is said. The sole averment is: 'That the reason your deponent has not turned over said sum is because he has no such sum in his possession or under his control, directly or indirectly, and has no means whatsoever of obtaining said sum of money.' In view of the case made out by the moving papers this averment is too bald and indefinite to have any persuasive force and we think the order of commitment was warranted by the record before the district judge."

We desire also to particularly call the attention of the court to the case of *In re Frankel, supra*, wherein the District Judge, in an exhaustive opinion which reviews the decisions in many jurisdictions, discusses the rules which should govern the pro-

cedure in contempt proceedings, and finally comes to the conclusion, which is best expressed by the *syllabus,* in the American Bankruptcy Report, as follows:

"An order of a referee adjudging that a bankrupt turn over certain property to his trustee is a conclusive determination that at the time such order was made the bankrupt was in possession of the property directed to be turned over, and the time for review having expired, the bankrupt is estopped from denying such fact upon a motion to punish him for contempt for refusing to obey. *The only issue open to the respondent in such case is to show what he has done with the property since the date of the order.*" (Italics are ours.)

The case of *In re Kirsner vs. Taliaferro, supra,* is also particularly illuminating on this subject, the court arriving at practically the same conclusion as that announced *In re Frankel, supra.*

The attention of this court is also particularly called to the late case of *In re Epstein,* 30 A. B. R. 387; 206 Fed. 568. (D. C., Pa.), in which the District Court, speaking of the order of surrender, says:

"If this order becomes final, either by failure to have it reviewed or by affirmance in the District Court, a definite step has been taken; the proper tribunal has settled beyond future controversy that

the assets described were in the bankrupt's possession or control at the time of bankruptcy."

The court in this same case then goes on to hold that the bankrupt, to escape punishment for contempt, must satisfy the court that he is physically unable to obey the order, and, he must make this showing, not by denying, or attempting to show that he never had the money, but by admitting that he did have the money, but establishing to the satisfaction of the court that he *no longer has it,* in which event, he may still be liable under the criminal law, but cannot be confined by civil process, and this court says further (page 390):

"Actual or virtual imprisonment for debt has ceased, but imprisonment to compel obedience to a lawful judicial order (if it appear that obedience is being wilfully refused) has not yet ceased, and ought not to cease unless it should be thought expedient to destroy all respect for the courts by stripping them of power to enforce their lawful decrees."

And, so, we contend, that under the authorities above cited, the burden was entirely upon the respondent, after admitting that she did have the money in her possession and under her control when the order of July 23rd, 1913, was made, to

show the happening of certain events in the interim (between the making of the order and the contempt hearing) which then made it physically impossible for her to obey the order; that upon such a showing only, an order dismissing her from the contempt proceeding would be proper.

Something should be said concerning the findings of fact Nos. 2, 3 and 4, which mention the pendency of the criminal proceeding against the bankrupt and the respondent arising out of the same subject matter which forms the basis of the contempt proceeding. It is apparently the purpose of the respondent to contend that because the government had instituted criminal proceedings for violation of a criminal statute, against the bankrupt and the respondent, the District Court should not have entertained the contempt proceeding, presumably because it was an effort to impose double punishment for the same offence. This position, however, is wholly untenable, as the contempt proceedings were instituted, not for the purpose of punishment, but to coerce the respondent to perform the affirmative act required by the court's

order. In such case, the commitment stands only until the order has been complied with. If imprisoned, as is aptly said *In re Nevitt,* 117 Fed. 461, "he carries the keys of the prison in his own pocket. He can end the sentence and discharge himself at any moment by doing what he had previously refused to do."

The distinction between criminal contempt, the punishment for which is punitive and to vindicate the authority of the court, and civil contempt, the punishment for which is remedial and for the benefit of the complainant in the contempt proceeding, is clearly point out in

Gompers vs. Buck Stove Co., 224 U. S. 418; 31 Sup. Ct. 492.

and also in the following bankruptcy cases:

In re Kahn, 30 A. B. R. 322; 204 Fed. 581. (C. C. A., 2nd Cir.)

In re Kirsner vs. Taliaferro, supra.

In conclusion, we maintain that the lower court heard this case and rendered its decision upon an entirely wrong theory, to the prejudice of the trustee. We ask this court not to reverse the lower

court to the extent of ordering the commitment of the respondent for contempt, but we do ask this court to reverse the decision and order of the lower court to the extent of directing a rehearing of the contempt issues upon the following lines of procedure; first, the lower court must accept the order of July 23rd, 1913, as conclusive of the respondent's possession and control of the $9,000 on the date the order was made; second, the court must hold that the burden rests upon the respondent to show such a disposition of the $9,000 subsequent to July 23rd, 1913, as makes it impossible for her to comply with the order; third, that if this showing does not go beyond a mere denial that the respondent ever had possession or control of the money, and that she had it on July 23rd, 1913, the court must then commit the respondent for contempt, and order her to be incarcerated until she complies with the order, or, until otherwise discharged by the court.

Respectfully submitted,

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